IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2007

CORAM

THE HONOURABLE MR. JUSTICE P.JYOTHIMANI

Appeal Suit No. 958 of 1993

A.S.Krishnan . Appellant(Plaintiff)

Versus

1.N.S.Venkatarama Pillai (deceased)
2.The Commissioner,
H.R.& C.E.,
Madras-34.
3.Kannammal, W/o.Late N.S.Venkatarama Pillai
4.Chennammal)
5.Selvarangan)
6.Gomathi)Daughters of Sons of
7.Gokulavanan)Late N.S.Venkatarama Pillai
8.Vijaya)
9.Sengamalam)
10.Shanthi)
11.Indhira)

. . Respondents(Defendants)

(RR3 to RR11 are brought on record as LRs of the deceased first respondent as per the order of this Court in C.M.P.No.227 to 229 of 2007 dated 24.03.2007)

Prayer: This appeal suit is preferred against the decree and judgment of the Court of the subordinate Judge, Dharmapuri made in O.S.No.223 of 1989 dated 15.07.1991.

For Appellant :Mr.T.L.Ramamohan Senior Counsel for
Mr.M.K.Jayaraman
For Respondents :Mr.W.C.Thiruvengadam for
R1, and R3 to R11
Mr.M.R.Murugesan for R2
Special Government Pleader

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JUDGMENT

The unsuccessful plaintiff in the trial Court is the appellant in this first appeal. The plaintiff filed a statutory suit under Section 70(2) of Hindu Religious and Charitable Endowment Act (hereinafter referred as the Act) challenging the order of the second defendant, the Commissioner of H.R. & C.E. dated 5.5.88 passed in A.P.No.27/87 and also for a permanent injunction from interfering with the management of the suit temple and its properties.

2.It is seen that as per the provisions of the the Act, the second defendant has contested that the plaintiff was not the hereditary trustee in respect of the suit temple situated in the midst of the ThenPennar River in T.Ammapet, Harur Taluk, Dharmapuri District.

3.The Deputy Commissioner of H.R. & C.E. Department has originally passed an order on 13.12.86 declaring the first defendant in the suit as the hereditary trustee. Thereafter, the plaintiff filed an appeal before the second defendant in A.P.No.27/87 and the second defendant, the Commissioner, by his order dated 5.5.88 has confirmed the earlier order of the Deputy Commissioner of H.R. & C.E thereby holding that the first defendant is the hereditary trustee of the said temple. It is as against the said order, the plaintiff has filed the above statutory suit challenging the order of the second defendant dated 5.5.88 as per Section 70 of the Act.

4.The said suit was defended by the first defendant on merits and also on other defence that the suit is barred by limitation, apart from the further contention that the suit filed without issuing notice under Section 80 CPC is not maintainable. The trial Court has framed four issues namely;

i)Whether the suit is barred by limitation,

ii) Whether the Court fee has been paid properly,

iii)Whether the plaintiff is entitled for cancellation of the order of the second respondent dated 5.5.88 passed in A.P.No.27/87 and

iv)Whether the plaintiff is entitled for permanent injunction.

5.The plaintiff has examined 9 witnesses including himself and marked various documents Ex.A1 to Ex.A29. The first

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defendant also examined himself and marked various documents Ex.B1 to Ex.B9. However, the second defendant remained exparte.

6. On consideration of the oral and documentary evidence, the trial Court has found that the suit is not barred by limitation and the trial Court has come to the finding in respect of the Court fee in favour of the plaintiff. As far as the fourth issue regarding the prayer of injunction, the trial Court having found that the H.R. & C.E. Officials are in possession of the temple and the plaintiff is not in possession, hold that the plaintiff is not entitled for injunction. In respect of the third issue while dealing with the validity or otherwise of the order of the second defendant dated 5.5.88 passed in A.P.No.27/87, the trial Court has held that the first defendant is not the hereditary trustee and in that view of the matter held that the order of the second defendant dated 5.5.88 declaring that the first defendant as hereditary trustee of the temple is not valid in law deciding the issue in favour of the plaintiff. After giving decisions on these various issues on merit, based on the subsequent additional issues framed about the maintainability of the suit in the absence of a notice under Section 80 CPC, the trial court relying upon the judgment cited on behalf of the first defendant reported in 1989 TNLJ 1(ARULMIGHU RANGANATHASWAMY DEVASTHANAM SRIRANGAM Vs. HIS HOLINESS SRIVAN SATAGOP SRI VEDANTHA DESIKAR YATHINDRA MAHADESIKAN H.T. VEDANTHA DESIKAR SANNADHI & OTHERS) has held that in the absence of the notice under Section 80 CPC before filing the suit against the H.R. & C.E department, the suit is not maintainable and in view of the same, the suit was dismissed. It is against the said judgment, dismissing the suit, the plaintiff has filed the first appeal. It is true that in so far as it relates to the finding of the trial Court regarding the above said third issue i.e. about the validity of the order of the second defendant, the Commissioner dated 5.5.1988 held that the order of the Commissioner is not valid and therefore, the first defendant is not a hereditary trustee, as against which the first defendant has not filed any cross objection.

7.The learned senior counsel appearing for the appellant would contend placing reliance on the judgment of the Division Bench of this Court in THOLAPPA IYENGAR, ALIAS ALAGAR IYENGAR V. THE EXECUTIVE OFFICER, SRI KALLALAGAR DEVASTHANAM, ALAGARKOIL, MADURAI ETC AND 7 OTHERS reported in 1993-2-L.W.537, to substantiate his contention that by the judicial consensus it has been settled that in respect of the statutory suit filed under Section 70 of the Act notice under Section 80 CPC is not necessary.

8.As pointed out by the learned senior counsel, the Division Bench in the said judgment has held that the judicial consensus

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on the issue stating that a notice under Section 80 CPC is not required in respect of statutory suits. The decisions of the Division Bench in the the above said suit is as follows;

> "On the basis of the judicial consensus thus we are in a position to say that a notice under S.80, of the Code of Civil Procedure, 1908 is unnecessary if, having regard to the nature of the suit and the capacity and the context in which public officers have been impleaded, it is found that no purpose can be served by notice to such officers. The fact that the officer concerned has acted judicially or quasi-judicially may be one such fact which will lead to the conclusion that the purpose of the suit is not to sue the officer for any such act done by him in his official capacity, which shall attract S.80, of the Code of Civil Procedure,1908. The fact that a special procedure is created and a special jurisdiction is conferred for a certain type of adjudication upon a public officer and in that official capacity he is required to decide a dispute or a matter and a suit is provided as a remedy under the Special Act for the cancellation or modification of the order of such public officer shall also be a fact showing that such act done by such public officer in his official capacity will not attract S.80, of the Code of Civil Procedure, 1908. As the Supreme Court has said, the provisions in S.80, of the Code of Civil Procedure, 1908 are not intended to be used as booby-traps against the ignorant illiterate persons, but are intended to advance justice by affording on the one hand a person intending to sue the Government or a public officer in his official capacity opportunity to demand from the Government or such public officer redressal of his grievance within two months next after notice, and on the other hand to provide to the government or the officer concerned opportunity to consider whether the Government or the officer should contest the claim and/or to grant the relief as asked for and thus avoid unnecessary litigation. The scheme of the suit under S.70 of the Endowments Act, in particular, leaves no option with the Commissioner to rescind,

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review or recall his order. Once this is the position, it is unimaginable that a notice is necessary to afford to the Commissioner opportunity to consider the redressal of the grievances of the person who sought relief by way of a suit under S.70(1) of the endowments Act."

9.In view of the above said settled legal position, I have no hesitation to conclude that the decision arrived at by the learned trial Judge in holding that the suit is not maintainable for want of notice under Section 80 CPC is unsustainable. In view of the same, the decision in that regard is set aside. There is one other issue as pointed out by the learned counsel appearing for the respondents 1 to 10 that in spite of the fact that the trial Court has dismissed the suit, it has gone into the merits of the case to hold that the impugned order which was challenged in the suit is invalid. On the other hand, the learned counsel appearing for the respondents would submit that in all fairness, the trial Court should have decided the maintainability of the suit as a primary issue. Therefore, the order of the trial Court in deciding merit of the case holding that the impugned order of the second respondent is invalid which is in favour of the plaintiff but at the same time dismissing the suit for want of notice under Section 80 CPC cannot be sustained especially in the circumstances that as per the settled legal position, Section 80 CPC notice is not required. On considering the contentions raised by the learned senior counsel appearing for the appellant as well as the learned counsel appearing for the respondents, since I have already come to the conclusion that the decision of the trial Court in dismissing the suit for want of notice under Section 80 CPC is not valid and therefore it is set aside, I am of the considered view that since on the maintainability issue of the suit, now it is held that the suit is maintainable, the matter has to be remanded back to the trial Court for a fresh trial on the merit of the case by giving opportunities to both the parties for which course of action there cannot be any objection. In view of the above said facts, the judgment and decree of the trial Court passed in O.s.No.223/89 dated 15.7.1991 is set aside and the matter is remanded back to the trial Court for fresh trial to decide about the validity or otherwise of the

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impugned order of the second respondent dated 5.5.88 by giving opportunity to the parties and the trial Court is directed to complete the trial within a period of 6 months from the date of receipt of a copy of this order. The fist appeal stands allowed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

jikr

To

1.The Subordinate Judge,
Dharmapuri.

2.The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.K.Jayaraman,Advocate SR 18760
+1cc to Mr.W.C.Thiruvengadam, Advocate Sr 18469
+1cc to Govt. Pleader Sr 18597

VC (CO)
km/18.4.

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